

Memorandum 94-9

Trial Court Unification: Transitional Provisions (Personnel Decision Structure)

If SCA 3 is approved by the voters at the June 7, 1994, election, work will need to begin immediately to convert the current court system into a unified court system. The proposed operative date of unification is January 1, 1996.

JUDICIAL UNIFICATION

With respect to judicial unification (as opposed to administrative unification), the transition process should not be a particularly difficult matter. The judges in each county will need to establish whatever committees appear appropriate and confer and decide upon whatever department and assignment structure seems to fit the needs of their county. Their main task will be to select a presiding judge for the unified court to spearhead and organize the effort.

The Commission's SCA 3 proposals address these matters by directing the Judicial Council to guide the judicial unification effort. Proposed urgency legislation would become operative the day after the election:

68070.3. The Judicial Council shall, before January 1, 1996, adopt rules not inconsistent with statute for:

(a) The orderly conversion on January 1, 1996, of proceedings pending in municipal and justice courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after January 1, 1996.

(b) Selection of persons to coordinate implementation activities for the unification of municipal and justice courts with superior courts in each county, and selection of persons to serve as presiding judges of the superior courts on and after January 1, 1996.

(c) Preparation of any necessary local court rules that shall, on January 1, 1996, be the rules of the superior court.

Comment. Section 68070.3 requires the Judicial Council by rule to coordinate and guide trial court unification activities in the courts of each county. See also Cal. Const. Art. VI, § 23, for transitional provisions for trial court unification. The Judicial Council is responsible for conducting workshops and training programs involving members of the bench, bar, court staff, and community to establish policies, rules, and procedures for the transition to a unified court. The Judicial Council would also

provide for the needed staff and judicial training to support operations in the unified court.

ADMINISTRATIVE UNIFICATION

There are numerous court employees of each existing trial court that will be affected by unification. One of the major benefits of unification is thought to be a reduction in the need for court personnel as a result of consolidating functions. It is likely that the appropriate reductions may be achieved through attrition rather than layoffs. The decision-making structure for court personnel management issues, including job assignments, compensation, and benefits must be addressed at an appropriate stage and in an appropriate forum in the court unification process.

SCA 3 provides that the previously selected employees in each former superior, municipal and justice court district become the employees of the district court. This is appropriate as far as it goes. A process also needs to be established to settle personnel questions in advance of the operative date of unification. The Commission's report on SCA 3 promises that the Commission will deliver a such a procedure in time for enactment before the June election.

The procedure should be a mechanism to answer such questions as:

- Must existing county employees should give up seniority rights, retirement plans, accrued benefits, etc., in order to become unified court employees?
- How will layoff decisions be made if the unified court system requires fewer combined employees than the individual trial courts? (Collectively bargained seniority provisions may be difficult to apply from one court to the next. The best solution may be a phased-in reduction, with attrition resolving the problem.)
- Will unification require relocation of some employees to other courts within the unified court district? How will it be determined who gets relocated? What about relocation expense reimbursement?
- How are differences in pay, benefits, and retirement plans to be resolved? Should an effort be made to get all persons who are in the same class on the same pay scale and with the same benefits? Would this mean a pay cut for some employees? If so, can it be phased in? Would it mean a pay raise for other employees? Can that be phased in?
- Are there any collective bargaining agreements or memoranda of understanding applicable in a particular court that limit the ability to resolve any

of these problems most efficiently? Under the Constitution, court employees are exempt from civil service, but there may be limitations resulting from union contracts in individual courts that are protected by the Contract Clause.

Resolution of personnel issues will take intensive work by affected presiding judges, court administrators, and others who may be involved in personnel administration in the unified court.

A decision-making mechanism with authority to resolve these issues must be established. The mechanism needs to be put in place immediately so that the extensive consultations required can occur and the necessary actions can be taken in advance of the operative date of unification.

One approach would be to establish a committee of presiding judges and court administrators in each county, along with representatives of the Administrative Office of the Courts, county representatives, and employee representatives. Committee members would confer concerning the personnel needs of the unified court, any necessary personnel reduction or relocation plans, proposed salary, benefits, and retirement plan arrangements, and other personnel matters. The committee would have authority to act for the unified court, pending the operative date of unification, in making assignments, giving notices, and the like that will be effective on the operative date of unification.

A smaller committee type approach could involve a three person committee composed of the superior court presiding judge, a municipal court presiding judge, and a third person agreed upon by the two judges.

Or the matter could simply be left to the Judicial Council to handle by whatever procedure appears most appropriate to it. The Council would be charged with preparation of a plan for the orderly transition of the existing trial court system to a unified trial court system, including adoption of rules of administration, establishment of standards for classified positions, qualifications, selection, compensation, promotion, discipline, dismissal, and retirement of all officers and employees.

An alternative approach suggested in some previous unification proposals would be to structure personnel decisions in the unified court through a statutorily prescribed phase-in. All permanent court employees would be carried over into the unified court with their compensation unchanged for the first year. After the first year, employee classification and pay rate schedules developed by the Judicial Council would become effective. After five years, each court administrator would be empowered to eliminate supernumerary positions.

The Commission deferred decision on the appropriate decision-making mechanism pending receipt of a study commissioned by the Judicial Council and prepared by the Justice Management Institute. The study evaluates trial court coordination efforts in California. The staff has reviewed an advance copy of the study for its insights into the most effective structure for implementing trial court coordination.

The study finds that in those counties where the lowest levels of coordination were achieved, the implementation process lost momentum and leadership, and there was an inability to resolve disagreements.

The study finds that the counties most successful in achieving a high degree of coordination had a number of features in common:

(1) Effective and credible judicial leadership.

(2) Clear ultimate goals and a belief in the value of administrative coordination.

(3) Heavy reliance on task forces, working groups, and interorganizational committees for creation of a coordination plan.

(4) Involvement of the key affected individuals and groups both within and outside the courts.

(5) Use of an outside facilitator.

(6) Selection of a single executive officer for coordination purposes.

(7) Elimination of role of county clerk in the court.

The study finds that of these, items number (4)-(6) appear to be most critical.

The staff suspects that this recent and ongoing experience in trial court coordination can be applied equally well to trial court unification. The staff would base the administrative unification decision making structure on this model.

Specifically, the staff suggests that in each county, the judges should select a presiding judge for the unified court. The presiding judge should have ultimate decision making authority in all matters concerning administrative unification, including but not limited to employment structure, salary levels, benefits, branch assignments, layoffs, collective bargaining, memoranda of understanding, etc. The presiding judge should select an administrative officer to coordinate and implement unification decisions. The administrative officer could be an existing court employee or could be an outside administrator, depending on the circumstances of the particular county. The presiding judge should establish such committees as may appear proper to advise the presiding judge concerning

unification issues. The committees should consist of judicial and nonjudicial representatives, including representatives of any group affected by the committee's work. The committees should have the assistance of an outside facilitator, if the dynamics appear to call for it and funding is sufficient. The Judicial Council should adopt and promulgate rules and guidelines to assist and guide the courts in this process.

The staff offers the draft statutory language set out in the Exhibit to this memorandum for incorporation in the urgency implementing legislation for trial court unification.

Respectfully submitted,

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Exhibit

Trial Court Unification: Transitional Provisions (Personnel Decision Structure)

Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the Government Code to read:

CHAPTER 5.5. THE UNIFIED SUPERIOR COURTS

Gov't Code § 70200 (added). Transitional rules of court

70200. The Judicial Council shall, before January 1, 1996, adopt rules not inconsistent with statute for:

(a) The orderly conversion on January 1, 1996, of proceedings pending in municipal and justice courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after January 1, 1996.

(b) Selection of persons to coordinate implementation activities for the unification of municipal and justice courts with superior courts in each county, and selection of persons to serve as presiding judges of the superior courts on and after January 1, 1996.

(c) Preparation of any necessary local court rules that shall, on January 1, 1996, be the rules of the superior court.

Comment. Section 70200 requires the Judicial Council by rule to coordinate and guide trial court unification activities in the courts of each county. See also Cal. Const. Art. VI, § 23, for transitional provisions for trial court unification. The Judicial Council is responsible for conducting workshops and training programs involving members of the bench, bar, court staff, and community to establish policies, rules, and procedures for the transition to a unified court. The Judicial Council would also provide for the needed staff and judicial training to support operations in the unified court.

Note. This provision was previously recommended by the Commission as Government Code Section 68070.3. We would relocate it to this chapter of transitional unification provisions.

Gov't Code § 70201 (added). Presiding judge

70201. (a) Immediately on or after June 8, 1994, the judges of the superior, municipal, and justice courts in each county shall select a presiding judge for

unification of the municipal and justice courts with the superior court in that county.

(b) The presiding judge for unification has the full authority of the court to make all decisions and perform all acts necessary for unification. The authority of the presiding judge for unification includes decisions and acts effective before, as well as on or after, January 1, 1996.

Comment. Section 70201 vests sole decision making authority for unified court transitional matters in a presiding judge selected for that purpose. Selection of the presiding judge is pursuant to rules adopted by the Judicial Council. Section 70200 (transitional rules of court).

While ultimate decision-making authority is in the presiding judge, the presiding judge should be advised by appropriate committees and should have the assistance of an administrative officer. Sections 70202 (selection of administrative officer), 70203 (appointment of committees).

Gov't Code § 70202 (added). Selection of administrative officer

70202. The presiding judge shall select an administrative officer to coordinate implementation of unification activities.

Comment. Section 70202 mandates selection of an administrative officer to help organize and implement unification decisions and activities. The administrative officer may be a current court executive officer or court administrator, or other current court officer or employee, or may be a new officer selected for that purpose. Selection of the administrative officer is pursuant to rules adopted by the Judicial Council. Section 70200 (transitional rules of court).

Gov't Code § 70203 (added). Appointment of committees

70203. The presiding judge shall establish and receive the advice and assistance of such committees as are appropriate concerning any matter relating to unification of the trial courts. The committees shall be composed of judges, court officers, court employees, or other interested persons that the presiding judge believes may best contribute to the implementation process. Where appropriate, the presiding judge may appoint an outside facilitator to help the work of committees.

Comment. Section 70203 encourages use of committees of affected persons and others to help resolve the many difficult transitional issues involved in unification. Use of outside facilitators has proven effective in trial court

coordination activities, and is encouraged in unification activities to the extent available funding permits. Establishment of committees and appointment of outside facilitators is pursuant to rules adopted by the Judicial Council. Section 70200 (transitional rules of court).

Gov't Code § 70204 (added). Court employees

70204. The authority of the presiding judge for unification includes, but is not limited to adoption of a personnel plan or merit system for court-appointed employees, which may be the same as the county personnel plan, that provides for wage and job classification, benefits, qualifications, recruitment, selection, training, promotion, retirement, discipline, and removal of employees of the court. The personnel plan may include determination of relative seniority rights of employees of the municipal, justice, and superior courts, layoff and attrition procedures, and assignment and relocation among court branches. The presiding judge for unification may negotiate collective bargaining agreements and memoranda of understanding, execute contracts, and make assignments and give notices effective before, on, or after January 1, 1996.

Comment. Section 70204 is drawn in part from Rules 205 and 207 of the California Rules of Court. Under California Constitution Article VI, Section 23, previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court, subject to contrary action pursuant to statute. Section 70204 expressly permits contrary action concerning court-appointed employees by the presiding judge for unification.